

Appeal from a decision of the Eastern States Office, Bureau of Land Management, requiring payment of a pro-rata share of advertising costs for competitive oil and gas lease sale ES-37291.

Set aside and remanded.

1. Accounts: Fees and Commissions--Fees--Oil and Gas Leases:
Competitive Leases

An amended regulation governing payment of the cost of publishing the notice of a competitive oil and gas lease sale may be applied to a pending matter where, absent intervening rights or countervailing public policy rea-sons, the amended regulation will benefit the affected party.

APPEARANCES: Alvin L. Terry, Jr., pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Alvin L. Terry, Jr., has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated April 9, 1987, declaring him the high bidder for parcel No. 11 in a March 31, 1987, competitive oil and gas lease sale, to the extent that the decision required him to pay a por-tion of the cost of advertising the sale.

The April 1987 BLM decision which declared Terry the high bidder for parcel No. 11 required him, within 30 days of receipt of the decision, to submit executed lease forms and any attached stipulations, and to pay "the pro-rata share of the total cost of publishing the Legal Notice [of the sale] in newspapers and journals," in the amount of \$252.77. In the absence of compliance, the decision provided that BLM would reject his bid. Terry appealed from that decision.

In his statement of reasons for appeal, appellant objects to payment of the cost of advertising the sale as assessed by BLM where only 9 of the 18 parcels offered for sale were bid upon. 1/ He argues that the cost of

1/ The record confirms that although 18 parcels were offered for sale in the March 1987 competitive oil and gas lease sale, only 9 were bid upon.

advertising for a parcel which was ultimately not bid upon should, in the interest of equity, be paid for "by the company who nominates the parcel * * * [as] opposed to transferring the cost of advertising to a company that bid on an entirely different parcel." Accordingly, he requests that "my advertising cost be modified to reflect such a policy."

[1] At the time of the competitive oil and gas lease sale involved herein, 43 CFR 3120.4-3 (1986) provided that "[t]he successful bidder [in a competitive oil and gas lease sale] shall, prior to lease issuance, pay his/her proportionate share of the total cost of publication of [a] notice [of that sale]." Such notice was required to be published "once a week for 3 consecutive weeks in a newspaper of general circulation in the area in which the lands [offered for sale] are situated or in such other publication as the authorized officer may determine." As explained in BLM Manual Release 3-121 (Aug. 14, 1985), at page 10, the proportionate share of the total cost of publication was the "total of all advertising costs divided by the number of parcels for which bids were received (including any rejected bids)."

However, effective June 17, 1988, BLM amended the regulations with respect to competitive oil and gas leasing in order to comply with the Federal Onshore Oil and Gas Leasing Reform Act of 1987, P.L. 100-203, 101 Stat. 1330-256 (1987). See 53 FR 22814 (June 17, 1988). Under those amended regulations, the successful bidder is no longer required to pay, prior to lease issuance, a proportionate share of the cost of publishing notice of a lease sale. Rather, he is required to pay on the day of the lease sale an "administrative fee of \$75 per parcel." 43 CFR 3120.5-2(b) (53 FR 22814, 22845 (June 17, 1988)). This fee is intended "to help defray the costs of the sale." Id. at 22830.

In James E. Strong, 45 IBLA 386 (1980), the Board noted that "[i]n the absence of countervailing public policy reasons or intervening rights, it may be appropriate to apply the amended version of a regulation to a pending matter where it benefits the affected party to do so." Id. at 388, and cases cited therein. Subsequently, in a number of cases involving incidents of noncompliance, we applied a change in policy to dramatically lower the assessments made against oil and gas lessees. See, e.g., Conoco, Inc., 102 IBLA 230 (1988); Hardy Salt Co., 96 IBLA 39 (1987); Mont Rouge, Inc., 90 IBLA 3 (1985); Willard Pease Oil & Gas Co., 89 IBLA 236 (1985).

In the case at hand, we find no countervailing public policy reasons or intervening rights that preclude the application of the amended regulation. We note that Terry preserved his objection by timely appealing. See Emery Energy (On Reconsideration), 67 IBLA 260, 264 (1982). Accordingly, we conclude that 43 CFR 3120.5-2(b) (1988) is applicable to this case, and that under such regulation, Terry is required to pay BLM an administrative fee of \$75.00.

fn. 1 (continued)

See Memorandum from Geologist, Branch of Fluid and Solid Minerals, Eastern States Office, BLM, to Chief, Branch of Minerals Adjudication, Eastern States Office, BLM, dated Mar. 31, 1987.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the case is remanded for action consistent herewith.

John H. Kelly
Administrative Judge

I concur:

James L. Burski
Administrative Judge

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